

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
)	
HEARTLAND WIRELESS COMMERCIAL)	File Nos. BMPD-970411OM
CHANNELS, INC.)	BMPD-970411ON
)	BMPD-980303FW
for New Multipoint Multichannel Distribution)	BMPD-980303FX
Service Stations on the E, F and H-Group)	BMPD-980303FY
Channels at Abilene, Texas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 22, 2003

Released: September 23, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Memorandum Opinion and Order*, we dismiss for lack of standing two petitions to dismiss or deny filed by Tex-Star Wireless Communications Alpha, Beta, and Gamma Partnerships (collectively, Tex-Star) on May 30, 1997 and April 16, 1998,¹ against the five above-captioned applications filed by Heartland Wireless Communications, Inc. and Heartland Wireless Commercial Channels, Inc. (collectively Heartland). Heartland filed the subject applications on April 11, 1997, April 30, 1997, March 3, 1998,² respectively, seeking authorization for new Multipoint Multichannel Distribution Service (MMDS) stations. For the reasons stated below, we dismiss Tex-Star's petitions for lack of standing.

2. *Background.* On July 29, 1991, Tex-Star filed three separate applications for new MMDS stations on the E Group, F Group and H Group channels at Snyder, Texas.³ Those applications were granted on August 31, 1992.⁴ On September 3, 1993 and December 27, 1993, Tex-Star filed certifications of completion of construction of Stations WMI373, WMI377, and WNTK882.⁵ The certifications were accepted on March 9, 1994, and the station authorizations were assigned a license

¹ See Tex-Star's Petition to Dismiss or Deny Heartland's Applications for New E and F-Group Multichannel Multipoint Distribution Service Stations at Abilene, Texas, File Nos. BMPD-970411OM, BMPD-970411ON, (filed May 30, 1997); see also Tex-Star's Petition to Dismiss or Deny Heartland's Applications for New H-Group Multichannel Multipoint Distribution Service Stations at Abilene, Texas, File Nos. BMPD-980303FW, BMPD-980303FX, BMPD-980303FY (filed Apr. 16, 1998).

² See File Nos. BMPD-970411OM (filed April 11, 1997); BMPD-970411ON (filed April 30, 1997); BMPD-980303FW; BMPD-980303FX; and BMPD-980303FY (filed Mar. 3, 1998).

³ File Nos. BPMD-9161096; BPMD-9161097; and BPMD-975892.

⁴ Common Carrier Bureau Domestic Facilities Applications, *Public Notice*, Report No. D-660 (rel. Sept. 9, 1992).

⁵ File Nos. BLMD-9350779, BLMD-9350780, and BLMD-9450245.

expiration date of May 1, 2001.⁶ On April 30, 2001, Tex-Star filed applications for renewal of the licenses for Stations WMI373, WMI377, and WNTK882.⁷ On August 2, 2001, Nucentrix Spectrum Resources, Inc. (Nucentrix), previously known as Heartland, filed petitions to deny against the pending renewal applications.⁸

3. On April 11, 1997, April 30, 1997, March 3, 1998, respectively, Heartland filed the five subject applications for new MMDS stations on the E, F and H Group Channels at Abilene, Texas.⁹ On May 30, 1997 and April 16, 1998, Tex-Star filed two separate petitions to dismiss or deny against the Heartland Applications.¹⁰

4. On October 18, 2002, the Wireless Telecommunications Bureau (WTB) released a Public Notice¹¹ (*October Public Notice*) in which it sought to ensure that it had a complete and accurate listing of all licenses and pending applications in the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the MMDS. The Public Notice referenced six different tables¹² of licensing information. Specifically, Table F listed all pending applications for MDS and MMDS. The WTB required that all MDS and MMDS licensees and applicants review and verify the information contained in these tables. For pending applications filed prior to March 25, 2002, the WTB required that the applicant respond in writing by December 18, 2002 if continued processing was desired.¹³ Tex-Star was required to respond to the *October Public Notice* because its applications for renewal of licenses for Stations WMI373, WMI377, and WNTK882 were filed on April 30, 2001. The time for licensees and applicants in these services to respond to the *October Public Notice* was extended

⁶ *Id.*

⁷ See Application FCC File Nos. BRMD-20010430AAE, BRMD-20010430AAF, and BRMD-20010430AAD (filed Apr. 30, 2001).

⁸ See Petitions to Deny filed by Nucentrix Spectrum Resources, Inc. (filed Aug. 2, 2001). Tex-Star filed an opposition on August 29, 2001, to which Nucentrix replied on September 12, 2001.

⁹ See File Nos. BPMD-970411OM (filed April 11, 1997); BPMD-970411ON (filed April 30, 1997); BPMD-980303FW; BPMD-980303FX; and BPMD-980303FY (filed Mar. 3, 1998) (collectively, the Heartland Applications).

¹⁰ See Tex-Star Petition to Dismiss or Deny Applications of Heartland Wireless Communications, Inc. for New E & F Group Multi-Channel Multi-Point Distribution Service Stations, Abilene Texas, File Nos. BMPD-970411OM, BMPD-970411ON (filed May 30, 1997). See also Tex-Star Petition to Dismiss or Deny (filed Apr. 16, 1998). On June 12, 1997, and April 27, 1998, Heartland filed oppositions to Tex-Star's petitions. See Heartland Opposition to Tex-Star's Petition to Dismiss or Deny (filed Jun. 12, 1997). See also Heartland Opposition to Tex-Star Petition to Dismiss or Deny (filed Apr. 12, 1998).

¹¹ Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS License Status and Pending Applications, *Public Notice*, DA 02-2751, 67 Fed. Reg. 69010 (2002) (*October Public Notice*).

¹² Table A listed all ITFS licenses including main station and two-way stations shown in the Broadband Licensing System (BLS). Table B listed all MDS and MMDS licenses, including Basic Trading Area authorizations, main stations and two-way stations contained in BLS. Table C listed all granted modifications and construction permits for ITFS for which certifications of construction had not yet been filed. Table D listed all granted MDS/MMDS modifications and conditional licenses for which certifications of construction had not yet been filed. Table E listed all pending ITFS applications. Table F listed all pending MDS/MMDS applications.

¹³ See *October Public Notice*.

to February 3, 2003.¹⁴ This deadline was further extended to February 21, 2003.¹⁵ Tex-Star did not respond to the *October Public Notice*.

5. On June 20, 2003, the WTB released the *June Public Notice* announcing action taken in response to the *October Public Notice*.¹⁶ Appendix B to the *June Public Notice* is a list of those pending MDS and MMDS applications with a filing date prior to March 25, 2002, where the applicant/licensee had not responded to the *October Public Notice*. WTB stated in the *October Public Notice* that “[f]or any applications for which written affirmations requesting further processing have not been received, those applications will be dismissed without prejudice.” Pursuant to Appendix B of the *June Public Notice*, Tex-Star’s underlying renewal applications, filed on April 30, 2001, for MDS Stations WMI373, WMI377, and WNTK882, Snyder, Texas were dismissed.¹⁷

6. *Discussion.* In light of the dismissal of Tex-Star’s renewal applications, we conclude that Tex-Star now lacks standing to pursue a petition to deny against Heartland’s applications. To establish standing, a petitioner must make specific allegations of fact sufficient to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury.¹⁸ Additionally, the petitioner must establish a causal link between the claimed injury and the challenged action by demonstrating that the injury can be traced to the challenged action and the injury would be prevented or redressed by the relief requested.¹⁹ In this case, Tex-Star cannot show that the grant of Heartland’s applications would cause it any injury because it no longer holds valid licenses for the stations that Tex-Star alleged would have been adversely affected by such action.

7. Consequently, we conclude that Tex-Star lacks standing to pursue the petitions to dismiss or deny against Heartland’s application for New E, F, and H Group Channel MDS Stations in Abilene, Texas. In this regard, we find that, based on the information now before us, grant of Heartland’s Applications would not cause any direct injury to Tex-Star. In light of this conclusion, we dismiss the two petitions to deny, filed by Tex-Star Communications Alpha and Beta Partnerships, on May 30, 1997, and Tex-Star Communications Gamma Partnership on April 16, 1998, against the Heartland Applications.²⁰

8. Accordingly, IT IS ORDERED, that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 47 U.S.C. § 309, and Section 21.30 of the Commission’s Rules, 47 C.F.R. § 21.30, that the petitions to dismiss or deny filed by Tex-Star Communications Alpha and Beta Partnerships on May 30, 1997, and Tex-Star Communications Gamma Partnership, on April 16, 1998, in connection with Application File Nos. BMPD-970411OM, BMPD-

¹⁴ Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS License Status And Pending Applications – Request for Extension of Response Date Filed by Multipoint Distribution Service and Instructional Television Fixed Services Licensees, *Order*, DA 02-3371 (rel. Dec. 5 2002).

¹⁵ Letter from D’wana R. Terry, Chief, Public Safety and Private Wireless Division, to Paul J. Sinderbrand, Esq., Wilkinson Barker Knauer LLP (dated Feb. 20, 2003).

¹⁶ Wireless Telecommunications Bureau Announces Action on Responses to Public Notice Regarding ITFS, MDS, and MMDS Pending Applications at Appendix B, DA 03-2057 (rel. Jun. 20, 2003) (*June Public Notice*), 67 FR 41791-01 (Jul. 15, 2003). We also note that the *June Public Notice* dismissed petitions to deny Tex-Star’s renewal applications filed by Nucentrix Spectrum Resources, Inc. (the successor-in-interest to Heartland) on August 2, 2001. See *June Public Notice* at Appendix C.

¹⁷ See *June Public Notice* at Appendix B.

¹⁸ See Alaska Native Wireless, LLC, *Order*, 17 FCC Rcd 4231, 4235 (WTB 2002).

¹⁹ *Id.*

²⁰ See Heartland Applications.

970411ON, BMPD-980303FW, BMPD-980303FX, and BMPD-980303FY and all related pleadings ARE DISMISSED for lack of standing.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 47 U.S.C. § 309, and Section 21.30 of the Commission's Rules, 47 C.F.R. § 21.30, that the Division's Licensing and Technical Analysis Branch SHALL PROCESS application File Nos. BMPD-970411OM, BMPD-970411ON, BMPD-980303FW, BMPD-980303FX, and BMPD-980303FY filed by Heartland Wireless Commercial Channels, Inc. in accordance with this *Memorandum Opinion and Order* and the applicable Commission rules and policies.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau